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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/532,395	03/22/2000	Gregory F. Ward		8053

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Gregory F Ward
11115 Rotherick Drive
Alpharetta, GA 30022

EXAMINER

PRATT, CHRISTOPHER C

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/27/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

AS-2

Office Action Summary

Application No.

09/532,395

Applicant(s)

GREGORY F. WARD

Examiner

Christopher C. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendments and accompanying remarks filed 6/24/02 have been entered and carefully considered. The amendments are not found to patentably distinguish the claims over the prior art and Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 10-18 rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended the claim to include that the limitation that the pore size and distribution does not substantially change. The originally filed specification does not state that the pores remain substantially constant, nor does it discuss any post-treatment effects on the pores of the fabric.

4. Claims 10-18 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable

one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant discloses stretching a nonwoven web under heat and tension. The skilled artisan would expect this process to inherently result in a change in pore size and distribution. Applicant's specification does not teach a method that enables the skilled artisan to stretch a nonwoven web under heat and tension without changing pore size and distribution.

5. Claims 10-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10 and 15 are indefinite because the phrase "said anisotropic precursor web" in line 2 lacks antecedent basis. The word "said" is a legal term used to refer to a previously mentioned noun.

Claims 10 and 15 are indefinite because they contain the phrase "improved softness" and "improved conformability." The adjective "improved" does not limit the metes and bounds of the claim. What is the invention improved over?

Claims 10 and 15 are indefinite because the transitional language "composed of." Please replace this phrase with the appropriate transitional language comprising, consisting of, or consisting essentially of, in order to clarify the scope of the claims.

Similarly, claims 11-12, 14, and 16-18 are indefinite because of the phrase selecting from the group "including." Please change the word "including" to "consisting of."

Claims 12 and 17 are indefinite because the language defining the Markush group reads "or " instead of "and."

Claims 10 and 15 are indefinite because "said blend containing from 60 to 100%." The invention would not contain a "blend" of fiber if it was composed of 100% thermoplastic fibers.

Claim 15 recites the limitation "said tension means" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hassenboehler, Jr. et al (5244482).

New claims 10-18 are rejected for the reasons set forth in the previous action. The new claims recite the same limitations as the previous claims, but add a limitation concerning pore size and distribution. It is the examiner's position that the pores of Hassenboehler are equivalent to the pores of the instant invention because both webs are created from the same materials, have the same structure, and are subjected to the same process limitations.

Applicant argues that the instant invention utilizes a dramatically lower strain rate than the web of Hassenboehler. Applicant does not provide any evidence comparing the relative strain rates. The examiner again notes that even though

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product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). Hassenboehler either anticipates or strongly suggests the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the teachings of Hassenboehler. Here, applicant merely states that the strain rates differ without comparing the supposed differences.

Also, the examiner notes that Hassenboehler teaches a wide range of drawing ratios as low as 2:1 (col. 2, lines 27-29). Hassenboehler also specifically teaches the use of low strain rates (col. 4, line 64). If Hassenboehler does not inherently teach applicant's claimed rate, it would have been obvious to a person having ordinary skill in the art to reduce the strain rate in Hassenboehler's stretching process. Such a modification would have been motivated by the desire to optimize the filtration properties of the web.

Applicant argues that Hassenboehler does not provide increased softness. It is the examiner's position that the softness of Hassenboehler's web is inherently equivalent to applicant's claimed web because both webs are created from the same materials by the same process. Also, as applicant points out, softness is a subjective test and the web of Hassenboehler may be more or less soft to different users.

Applicant argues that the instant invention has no significant reduction in pore size and distribution as evidenced by filtrations results shown in Table 4. However, example 6 does in fact show a substantial difference in filtrations efficiency.

Applicant argues that Hassenboehler only teaches a mixture of thermoplastic and nonthermoplastic fibers in different layers as opposed to applicant's mixture of said fibers within the same layer. Hassenboehler does teach the use of laminates; however, also teaches the use of composite webs (col. 15, lines 12-13). Here, laminates are clearly distinguished from the use of composite webs. Also, col. 3, lines 57-60, states that the substrate may be a single layered web or a laminate. Webster's Collegiate Dictionary Tenth Edition defines a composite as "a solid material which is composed of two or more substances having different physical characteristics and in which each substance retains its identity while contributing desirable properties to the whole." It is the examiner's position that a person having ordinary skill in the art would understand the common meaning of the word composite to refer to a single web composed two different materials. This interpretation has further support in light of Hassenboehler's teachings that the substrate web can be a single layer and that Hassenboehler specifically teaches both laminates and composites.

Applicant argues commercial success, but offers no evidence supporting said argument.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

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If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher C. Pratt
August 25, 2002



CHERYLA. JUSKA
PRIMARY EXAMINER